



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.: General
24 April 2015

Original: English

**Committee against Torture
Fifty-fourth session**

Summary record of the 1295th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 22 April 2015, at 3 p.m.

Chairperson: Mr. Grossman

Contents

Consideration of reports submitted by States parties under article 19 of the Convention
(continued)

Sixth periodic report of New Zealand (continued)

This record is subject to correction

Corrections should be submitted in one of the working languages of the United Nations. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad. sec. eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.15-08209 (E) 240415 240415



* 1 5 0 8 2 0 9 *

Please recycle A small recycling symbol consisting of three chasing arrows forming a triangle.



The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Sixth periodic report of New Zealand (continued) (CAT/C/NZL/6; CAT/C/NZL/Q/6; HRI/CORE/NZL/2010)

1. *At the invitation of the Chairperson, the delegation of New Zealand took places at the Committee table.*
2. **Mr. Crooke** (New Zealand) said that the Crimes of Torture Act 1989 contained a definition of torture that was materially the same as the definition in article 1 of the Convention. The Act had been amended in 2007 to give effect to New Zealand's obligations under the Optional Protocol.
3. The New Zealand Bill of Rights Act had the status of ordinary law because the country had no written constitution and no concept of supreme law. The Government was considering the recommendations issued by the Constitutional Advisory Panel in 2013, including the possibility of reviewing the Bill of Rights Act. The Act included two important safeguards. First, where an enactment could be interpreted in a manner that was consistent with the Bill of Rights Act, preference must be given to that interpretation. All administrative decisions and secondary legislation must also be consistent with the Act unless the inconsistency was authorized by primary legislation. Secondly, where a bill appeared to be inconsistent with the Act, the Attorney-General was required to bring it to the attention of the House of Representatives. Parliament could, however, reach a different conclusion from that of the Attorney-General on the basis of expert advice.
4. Supplementary Order Papers (SOPs) were not vetted for consistency with the Bill of Rights Act. However, the approval of Cabinet was required in the case of significant Government SOPs. Furthermore, a disclosure statement must be appended to all Government bills and SOPs indicating their consistency with the Act and international human rights treaties. The Legislation Amendment Bill currently before Parliament would make disclosure statements mandatory for most Government bills.
5. Under the reservation to article 14 of the Convention, the Government reserved the right to award compensation to torture victims only at the discretion of the Attorney-General. New Zealand had entered the reservation because at the time there had been no statutory remedy for torture victims. The courts had since held that compensation could be awarded for breaches of the Bill of Rights Act. The Government might consider the possibility of withdrawing the reservation in due course.
6. The Government was not in a position to withdraw the reservation to article 32 (2) of the Convention on the Rights of the Child. The existing legislation established age thresholds for entry into work and for safe work.
7. New Zealand reserved the right not to apply article 37 (c) of the Convention on the Rights of the Child in circumstances where the shortage of suitable facilities, particularly in remote areas, made the mixing of juveniles and adults unavoidable. However, it continued to review its reservation.
8. As the central national preventive mechanism, the Human Rights Commission coordinated the other mechanisms, identified systemic issues and developed common policies and procedures. It promoted engagement with civil society and organized training and development activities. As the mechanisms faced funding pressures, they were collaborating with a view to making the best use of available resources. The Independent Police Complaints Authority was developing national standards for police custodial facilities and a robust reporting and auditing process. The Office of the Children's

Commissioner was adopting a new systems and performance approach. The Inspector of Service Penal Establishments had sufficient funds to carry out its role. The Office of the Children's Commissioner and the Office of the Ombudsman were jointly responsible for youth detention facilities, and the 2015/16 draft budget for the Office of the Ombudsman provided for an increase of \$NZ 390,000 to finance the employment of two additional investigators and the contracting of specific expertise to assist with inspections and monitoring.

9. The Government recognized that the mechanisms lacked expertise in some areas, particularly that of mental health. The funding increase for the Office of the Ombudsman included a provision for specialist advisers as and when required. All rest homes and residential care facilities for older persons were certified and audited to ensure that they met the standards set out in the Health and Disability Services (Safety) Act 2001. All disability services, including residential services, were also regularly audited and assessed. Unannounced and issues-based audits were undertaken when necessary. Health providers in child, youth and family residences were also required to comply with the 2001 Act.

10. If the national preventive mechanisms were concerned about gaps or overlaps in their mandates, the Government was open to discussing possible changes.

11. As the Independent Police Conduct Authority was an independent entity under the Crown Entities Act 2004 and was chaired by a district court judge, it was independent from the Government and the police. Internal investigations into complaints conducted by the police were overseen by the Authority, which had the power to launch its own investigations, especially into serious complaints. The Authority could not bring prosecutions under the Crimes of Torture Act because it lacked a prosecutorial function.

12. The Institute of Judicial Studies provided education programmes and resources to support judges in the ongoing development of their careers. The current curriculum included domestic human rights legislation and international human rights instruments. The Convention was included in the initial training course for all new custodial staff and as part of the training topic "Our Way and Human Rights". The Convention was not included in police training courses but training was provided on the Bill of Rights Act and in a range of procedures designed to ensure that the provisions of the Convention were met. No specific training was provided to medical professionals working in the corrections system.

13. The purpose of the 2013 amendments to the Bail Act 2000 was to make it harder for those accused of serious offences to obtain bail. The decision, however, still rested with the court. The reverse burden of proof was now applicable to defendants charged with murder or serious drug-dealing offences. The Act also expanded the range of violent and sexual offences that were subject to a reverse burden of proof where the defendant had previously been convicted of such an offence. The presumption in favour of bail for defendants aged 17 years who had previously been imprisoned and those aged 18 and 19 years had been withdrawn. The amendments maintained the balance between protection of defendants' rights and the safety of the public.

14. The Corrections Amendment Act 2013 introduced changes to the rules governing strip searching in some situations with a view to establishing a single straightforward procedure, preventing contraband from entering prisons, ensuring the welfare of prisoners and reducing unnecessary strip searches.

15. The Prisoners and Victims Claims Amendment Act 2013 ensured an appropriate balance between the provision of financial redress to prisoners for human rights violations and victims' right to file civil claims against awards of compensation.

16. Under the Electoral (Disqualification of Prisoners) Amendment Act, persons serving a prison sentence were debarred from registering in the electoral roll.

17. **Mr. Chhana** (New Zealand) said that all 185 claims received in the case of the Lake Alice victims had been settled at a total cost of \$NZ 10.8 million. The Historic Abuse Resolution Service of the Ministry of Health had settled 119 claims, totalling \$NZ 684,000, concerning treatment of individuals in State-run psychiatric facilities prior to 1993. The Ministry of Education had settled 28 claims, totalling \$NZ 332,500, concerning abuse or neglect at residential special schools prior to 1989. The Ministry of Social Development had settled 575 of the approximately 1,680 claims concerning historic abuse while in State care. It remained committed to closing all historic claims by 31 December 2020. The Government acknowledged the delay in settling outstanding claims and the Minister of Social Development had stated that a new strategy would be in place by 30 June 2015.

18. Ex gratia payments were made in respect of claims that were not actionable at law but that created a moral obligation where a Government department's actions or performance had been deficient to a degree that the person concerned had suffered loss or harm. The amounts paid to date ranged from \$NZ 1,150 to \$NZ 70,000, depending on the severity of the department's failure.

19. The Crown did not intend to conduct a separate inquiry from the police investigation into historic abuse because the New Zealand Police was the agency responsible for investigating serious criminal offences. If further information came to light regarding suspected criminal offences, it could reopen or initiate a new criminal investigation.

20. A Ministerial Group on Family Violence and Sexual Violence had been established in December 2014 and a draft five-year National Sexual Violence Primary Prevention Strategy and Programme of Action was being developed. People who experienced sexual violence had access to a range of governmental and non-governmental services, including medical forensic examinations, telephone and face-to-face counselling, whanau (family) support and specialist therapy. Government agencies, in consultation with the wider sexual violence sector, were developing a more coordinated approach to ensure that sexual violence services were appropriately funded and had the necessary coverage. In the interim, \$NZ 10.4 million had been earmarked in the 2014/15 budget for the sexual violence sector.

21. The Accident Compensation Corporation, a public-sector entity, had recently announced changes in its compensation and rehabilitation services for victims of sexual violence. The new Integrated Services for Sensitive Claims provided clients with safe and flexible access to a range of support, assessment and treatment services. The Ministry of Justice provided advisory services and financial grants for court costs, accommodation and property repairs. The Ministry also funded Victims Support, an NGO that provided support to victims of crime. The parliamentary Social Services Committee was undertaking an inquiry into the funding of specialist sexual violence services.

22. Protection orders under the Domestic Violence Act could be obtained for both actual and threatened violence. Any breach of a protection order was a criminal offence, even if the behaviour itself was not. The maximum penalty for breaching a protection order had been increased from 2 to 3 years' imprisonment.

23. A number of steps had been taken to encourage victims of domestic and sexual violence to report the offences against them. There had been an increase in reporting since the launch of the "It's not OK" campaign. Victims were also provided with greater support during legal proceedings. New Zealand Police had launched an internal Family Violence Change Programme to improve the efficiency and effectiveness of their response. The Prevention First police strategy had also improved the services provided to victims.

24. As the police did not routinely carry firearms, tasers were an important tactical option to ensure the safety and security of the public and police officers. Every taser was equipped with a camera and the use of tasers was closely monitored. During the first six months of 2014, tasers had been shown in only 0.7 per cent of apprehensions and

discharged in only 0.09 per cent. They had been deployed against Pacific Island peoples in 128 out of 10,000 apprehensions, against Maori in 87 out of 10,000 apprehensions and against Pakeha (people of European descent) in 63 out of 10,000 apprehensions. The overall ratio for cases in which a taser had been shown was 51 per cent for Maori and 13 per cent for Pacific Island peoples. Where a taser had been discharged, the corresponding ratio was 51 per cent for Maori and 24 per cent for Pacific Island peoples.

25. In the case of discharges, a review was conducted by the Police Taser Assurance Forum. Lessons learned were used to update policy and guidance. The Independent Police Complaints Authority also investigated specific complaints.

26. New Zealand resettled 750 refugees annually under the Refugee Quota Programme. They spent the first six weeks at the Mangere Refugee Resettlement Centre.

27. The Government had announced that it would, if requested, take 150 refugees from Australia. The Australian Government had not made any such request to date.

28. A person could be deported by order of the Governor-General if the Minister of Immigration certified that he or she was a threat to security. Such deportations could not, however, be undertaken while a person's claim of being a victim or at risk of torture was being assessed, or if the person was recognized as a protected person under the Convention.

29. The mass arrival provisions enacted in 2013 had not been used to date. The power to detain for an initial period of six months and to order extensions of one month was subject to judicial control. Immigration New Zealand reviewed and, if necessary, adjusted the detention circumstances of asylum and protection claimants every fortnight.

30. Asylum seekers and refugees could file appeals against declined claims with the Immigration and Protection Tribunal. The grounds on which claims could be denied were consistent with international law. Legal aid was available for proceedings before the Tribunal.

31. **Mr. Arbuckle** (New Zealand) said that the reasons for the overrepresentation of Maori and Pasifika in the criminal justice system were complex. The Government had implemented a range of programmes and initiatives to address the overrepresentation, including: a youth crime action plan that focused on Maori young people; restorative justice services that had a strong alignment with Maori values and culture; Maori and Pacific youth courts; and Maori and Pacific focus units in prisons that drew on Maori and Pacific traditions and cultures.

32. Programmes that directly addressed education standards, employability and underlying health issues such as drug and alcohol abuse among Maori offenders resulted in lower levels of re-offending.

33. The Department of Corrections ran two Whare Oranga Ake (house of healing or renaissance) units for Maori prisoners nearing the end of their sentence to assist them in finding employment and accommodation on release. Both units were located outside the prison perimeter fence.

34. There was no evidence to suggest that a root cause of the higher representation of Maori women among women prisoners was lack of access to legal representation, since the legal aid programme provided a sound safety net. Kowhiritanga was a group-based rehabilitation programme designed to assist women prisoners and to develop skills to prevent re-offending. It also addressed the issues of domestic and sexual violence that many women prisoners had experienced. Cultural and spiritual rehabilitation programmes were organized at the Auckland regional women's corrections facility.

35. Replying to questions about the classification of prisoners, he said that it was determined based on their risk to others and their risk of escape and was used to assign

them to a cell type and regime. The Department of Corrections' guiding principle was to ensure that there were no unnecessary limitations on prisoners' access to rehabilitation, education and employment opportunities. Two initiatives had been taken in response to the 2013 recommendation of the Subcommittee on Prevention of Torture to review the classification system, namely changes to the management of under 25-year-olds to give them greater access to employment outside prison and the introduction of a remand management tool to enhance risk assessments and provide greater access to rehabilitation programmes and education. Moreover, the Department had undertaken a comprehensive review of the classification system that should be completed in 2015.

36. Since the submission of the report, 11 additional complaints had been brought to the High Court, all falling under the category of ill- or inhumane treatment while in prison.

37. The segregation of prisoners was defined as limiting or restricting the opportunity of a prisoner to associate with other prisoners and was avoided unless absolutely necessary or requested by a prisoner. Under the Corrections Act, prisoners could be segregated for the purpose of assessing or ensuring mental health. When there was a risk of self-harm, a segregated prisoner was seen by a health professional daily. Insofar as possible, segregated prisoners were subject to the same rules, routines and privileges as other inmates. A very small number of prisoners were held in management units due to a high risk of escape. Their case had to be reviewed regularly and segregation decisions could be appealed to the Inspector of Corrections, the regional operations manager, an ombudsman or a visiting justice. The Department had accepted most of the Ombudsman's recent recommendations regarding the use of segregation. For example, the Department had ceased to use the Waikeria Youth Unit and had consolidated its youth units at two sites and had put in place strategies to ensure that segregation was implemented uniformly across the system and in keeping with the relevant legal provisions.

38. Prisoners received the same standard of primary health services as the outside community. Nursing staff were employed full-time by the Department, while doctors and dentists were contracted to the Department but operated independent practices; all were subject to their professional regulatory bodies. All Department-run health centres must be accredited by the Royal New Zealand College of General Practitioners. Secondary and tertiary health care was delivered by the public health system. All prisoners underwent a mental health assessment on arrival. Those found to have serious mental health needs received treatment through the publicly funded Forensic Mental Health Services. Additional funding had been made available to meet the needs of prisoners at the Mason Clinic, including 15 extra short-term care beds. Regarding the treatment of persons in police custody, he said that most of the doctors were on a roster and were called in as needed. Suspects could also request to see a doctor of their choice.

39. Turning to the concerns raised about double bunking, he said that the prison population had grown since the submission of the report and stood at 8,795, or 85 per cent of total capacity, and that 1,405 cells were shared by two or more prisoners. A new facility would be opening in South Auckland in May 2015, providing an additional 960 beds and enabling the Department of Corrections to close some 600 beds in three prisons that fell short of standards of decency and access to rehabilitation. The use of double bunking was an integral part of the Department's accommodation mix and was not an emergency response to overcrowding. Double bunking was largely used in the most modern prisons and in cells that met statutory requirements for double occupancy. Prisoners were carefully selected for cell sharing, were reassessed at regular intervals and had the right to lodge complaints about their accommodation. In 2009 and 2010, the Department had conducted research on the impact of double bunking, which had involved interviews with prison managers and staff as well as prisoners and had shown that, although most prisoners

expressed a preference for a single cell, shared cells had no detrimental effect on the safe, secure and humane containment of prisoners.

40. Regarding private prisons, he said that there was currently one contract-managed prison, the Mount Eden Corrections Facility, and that the new facility in South Auckland would be the second. Contract-managed prisons were subject to the same domestic laws and international standards regarding prisoner welfare and management as publicly run facilities and were required to report regularly to the chief executive of the Department of Corrections. They were also subject to oversight by monitors appointed by the chief executive and could be investigated by the Department when concerns arose regarding the contractor's management of the prison or prisoners. In addition, contract-managed prisons were measured on an ongoing basis against several key performance indicators, and failure to meet the indicators incurred financial penalties. Mount Eden did not stand out as having a particularly high rate of prisoner-on-staff assaults compared to other prisons of similar size. However, staffing levels differed from publicly run prisons because the mandate of contractors was to provide outcomes. Nevertheless, contract-managed prisons did have a staffing model to which they were required to adhere.

41. Lastly, replying to questions regarding the safety of transgender prisoners, he said that the Department of Corrections recognized the potential risks of mixing transgender prisoners with the general inmate population and considered that the risks were best handled through individualized planning and consultation with the person concerned. Generally, offenders were placed in a prison based on the gender identified on their court-issued warrant of committal. When the Department had a copy of the birth certificate specifying a different gender from that on the warrant, the birth certificate prevailed. In the absence of a birth certificate or where offenders so desired, offenders could apply for placement in a facility aligned with their gender identity, provided that they were not excluded from doing so by the type of offence committed, such as sexual offences against persons of their chosen gender. Placement decisions could be appealed to the Inspector of Corrections or the Ombudsman. Under the Corrections Act, strip searches could only be carried out by a person of the same gender as the offender, as determined by the prison in which they were placed. Transgender prisoners could choose between a single cell and a cell shared with other transgender prisoners and could request to be segregated.

42. **Ms. Muller** (New Zealand), replying to a series of questions asked at the 1292nd meeting, said that there were two Law Officers, namely the Attorney-General and the Solicitor-General, who both had the authority to consent to prosecution under the Crimes of Torture Act. The position of Attorney-General was a ministerial portfolio and could, therefore, be filled by a politician; however, unlike other Cabinet ministers, the Attorney-General was required to act independently of party considerations and was not accountable to Parliament or any judge. The same independence criteria applied to the Solicitor-General. Consent had to be obtained from one of the law officers before proceedings could be initiated.

43. She confirmed that no proceedings had been brought under the Crimes of Torture Act during the reporting period, nor had the police requested consent for prosecution in such cases. Given that conviction was a prerequisite for the awarding of compensation, there had been no compensation ordered pursuant to the Act. However, compensation for acts of torture or ill-treatment could be sought through the civil courts. Since January 2009, no civil suits brought against the Government or the police for allegations of torture had resulted in the awarding of damages or in an out-of-court settlement.

44. The Evidence Act set strict criteria for disproving that statements had been made under oppression, irrespective of the standing of the person engaging in the oppressive conduct. The Law Commission had reviewed the application of the Evidence Act in 2013 and had not found anything to suggest that section 29 was problematic.

45. A number of measures had been adopted with regard to trafficking in persons, including the Government-wide Plan of Action to Prevent People Trafficking, the strict regulation and monitoring of high-risk industries, the Organized Crime and Anti-Corruption Legislation Bill and participation in regional efforts such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. A study commissioned in 2011 had found that migrant sex workers entered the country of their own volition and were generally content in their occupation and workplace. Brothels and commercial sex premises were regulated under the Prostitution Reform Act.

46. There had been no need for diplomatic assurances or their monitoring during the reporting period because there had been no extradition requests in death penalty cases. The Minister of Justice's decision to surrender an individual was judicially reviewable. Three of the four steps of the extradition process, mentioned in paragraph 97 of the report, could be challenged through judicial review, while the initial decision in the fourth step could be appealed only on a point of law. No extradition orders had been overturned on the grounds that the individual was at risk of torture in the requesting State. The Law Commission was reviewing the Extradition Act and the Mutual Assistance in Criminal Matters Act and should issue its report later in 2015.

47. Regarding the difference between interviewing and interrogating suspects, she said that both were forms of questioning with the possible purpose of obtaining a confession and that cases of prisoners who committed an offence while in custody were investigated by the police, not corrections officials.

48. **Mr. Modvig** (Country Rapporteur) asked whether the national human rights plan currently under preparation would include a major legislative review to ensure compliance with international standards, a recommendation that had been made during the universal periodic review and that the State party had accepted. He also asked whether private prisons came under the mandate of the national preventive mechanism. He pointed out that the delegation had not provided statistics on complaints of torture or ill-treatment against public officials or on any follow-up thereto. Noting that no specific training was currently in place for doctors, he said that all medical practitioners who worked with persons deprived of their liberty should be trained to recognize, investigate and document cases of ill-treatment in keeping with the Istanbul Protocol. He wished to know what impact amendments to laws on the rights of persons deprived of their liberty had had on the prevalence of strip searches and the use of restraints. He also enquired what the practice was regarding isolation in mental health facilities. He welcomed the fact that the Turning of the Tide programme might be expanded to other target groups. He requested confirmation that reparation in respect of historic claims was mainly financial and did not include rehabilitation. He asked how the Government ensured that asylum seekers who had suffered torture were identified. Did the Government believe that the number of cases of trafficking in persons accurately reflected the scope of the problem?

49. **Mr. Zhang** (Country Rapporteur) asked for confirmation that none of the 11 complaints brought to the High Court by prisoners since the submission of the report had involved allegations of torture.

50. **Mr. Bruni**, supported by **Ms. Belmir**, expressed particular concern about objectivity given that investigations into allegations of torture committed by police officers were conducted by the police. He invited the delegation to comment on figures suggesting that there were far more assaults at the privately run Mount Eden Corrections Facility than at the public Auckland Prison.

51. **Ms. Belmir** repeated her question about the State party's reservations to both the Convention against Torture and the Convention on the Rights of the Child and strongly recommended that it should conduct research into the physiological effects of tasers.

52. **Ms. Gaer** said she shared the concerns regarding the Independent Police Conduct Authority. She enquired which authority was responsible for determining the level of public interest that formed the basis of decisions to institute prosecutions. She also asked where the public interest lay in the lack of prosecutions with respect to the Lake Alice hospital case and whether the State party recognized the preventive value of bringing prosecutions. She wondered why no prosecutions for trafficking in persons had been instituted for eight years and when the State party would bring its legal definition of trafficking into line with international instruments.

53. **Mr. Domah** expressed concern at the fact that the position of the Attorney-General, who took decisions for prosecutions, was a ministerial portfolio. Even though the Attorney-General was not bound by cabinet collective responsibility or answerable to the parliament, that office should not be held by a politician.

54. **Mr. Tugushi** asked whether steps had been taken to improve living conditions and access to sanitary facilities in centres for refugees and asylum seekers. Would the State party rectify the lack of separation among women, men and young persons who were held at the detention centre in Wellington airport? He asked when the use of certain restraints, such as waist restraints, cages and handcuffing to the floor, during the transportation of prisoners would be abolished, taking into account the dangerousness of some detainees.

55. **The Chairperson** asked whether the provisions of the Convention were directly applicable in the State party. He would like further information regarding the use of tasers against persons with psychosocial disabilities; the costs of the introduction of tasers in the national police, including training provided for officers; the costs of alternatives to tasers; and cases of injuries caused to police officials which had prompted the decision to introduce tasers. Was consideration given to the possibility that the use of tasers might result in an increase in the rate of crime?

56. Given the obligation to prosecute acts of torture under article 2, he asked whether the Attorney-General had discretionary power in cases of torture and inhuman treatment. He asked to what extent the Istanbul Protocol was disseminated among public servants. He would also like information on legislation concerning forced and involuntary sterilization and on any investigations conducted in that regard. Lastly, he asked whether the principle of non-refoulement extended to cases of risk of ill-treatment, in accordance with the provisions of wider application in the International Covenant on Civil and Political Rights, to which the State party was bound under the Convention.

57. **Mr. Modvig** asked whether the Government envisaged expanding legislation on juvenile detention to include 17-year-olds. Would the State party consider a more independent procedure for the appointment of doctors working for the police, who were currently chosen and paid by the police services themselves?

58. **Mr. Zhang** requested further information with regard to the out-of-court process that might be used to settle historic cases of abuse.

59. **Mr. Gaye** said he shared the concerns of other Committee members regarding the fact that the Independent Police Conduct Authority was not empowered to institute legal proceedings or even request the Attorney-General to institute proceedings, but was only competent to make recommendations. He would like to know to which public authorities those recommendations were directed.

The meeting was suspended at 5.10 p.m. and resumed at 5.25 p.m.

60. **Mr. Chhana** (New Zealand) said that the delegation would forward specific statistics on the use of tasers to the Committee in due course. He emphasized that prosecutions were brought against all officers suspected of criminal activity. The Independent Police Conduct Authority was independent in law and its activities were

supervised by a District Court Judge. Only inquiries into less serious complaints about police activities were conducted by police officers, who were chosen from a different district from that in which the complaint was made, while inquiries into more serious complaints were conducted by investigators of the Authority itself. The prosecutions were brought under the supervision of the Solicitor-General, who instructed private legal practitioners with respect to the prosecutions, in accordance with the Prosecution Guidelines, which were based on public interest and sufficient evidence. The fact that the national police was the primary investigating authority for police misconduct under the Crimes Act ensured consistency and prevented problems with overlapping jurisdiction.

61. **Ms. Muller** (New Zealand) said that the Convention was not directly applicable in the State party. The Crimes of Torture Act covered the Convention, the text of which was attached to the Act, and was designed to facilitate its application.

62. The Attorney-General was accountable for the way in which he exercised his discretion, since the use of discretion under the Crimes of Torture Act concerning decisions to institute prosecutions amounted to the exercising of a statutory power of decision, which could be reviewed by a High Court judge.

63. Police officers were required to consider the public interest when exercising their powers of discretion concerning decisions to bring prosecutions. Under the Prosecution Guidelines, foremost among the public interest considerations was the seriousness of the offence, and decisions to institute prosecutions for suspected cases of torture were therefore always taken.

64. **Mr. Crooke** (New Zealand) said that the second national plan of action for human rights would be drafted in 2015, based on the recommendations made under the universal periodic review process and subject to amendment. Specific lines of action would include a reduction in the overrepresentation of the Maori community in prisons and rehabilitation of former detainees, thereby addressing certain objectives under the Convention.

65. **Mr. Arbuckle** (New Zealand) said that the national preventive mechanism covered private prisons. Statistics on assaults committed in prisons had been provided to the Committee by the delegation. Renovation work on the Mangere Refugee Resettlement Centre had begun in 2014 and allowed for the centre to be fully operational during the renovation period. Stricter guidelines on mental health treatment had been developed in 2009 and were based on a human rights approach. The number of mental health patients treated in specific institutions and the use of seclusion methods had decreased. Single cell transportation vans were currently used for the transportation of prisoners, who were isolated from each other and only restrained upon entering and leaving vehicles or airplanes.

66. **Mr. Chhana** (New Zealand) said that, despite the low number of cases of trafficking in persons in the State party, programmes were being developed to enhance protection, and legislation was being expanded in order to cover domestic trafficking. The expansion of legislation on juvenile detention to cover 17-year-olds was under consideration by the Ministry of Social Development, within the framework of its work concerning the rights of the child. For every incident involving the presentation and discharge of a taser, a report had to be produced, accompanied by the footage from the camera attached to the taser. In addition, those reports contributed to policymaking regarding tasers. All reported historic cases of ill-treatment at Lake Alice hospital had been processed and victims granted ex gratia compensation. In the event that further cases were identified, reparation would be administered where necessary. Full reparation to victims comprised services, such as counselling, which were geared to the victims' needs and could be accessed at an appropriate time for the victims. The State party recognized the value of prosecutions of historic cases of abuse, which demonstrated to the public that such conduct was inadmissible.

67. **Mr. Crooke** (New Zealand) said that the refurbishment of Mangere Refugee Resettlement Centre was due to be completed in mid-2016.

68. **Mr. Chhana** (New Zealand) said that the independence of doctors working for the police was monitored and that their independence did not pose a challenge. Police rosters often contained nearly all of the medical professionals in the region, particularly in remote areas. That work accounted for a small part of their responsibilities and was often considered part of public service. Under the Bill of Rights Act, no one could be subjected to forced medical treatment, including involuntary sterilization, and legislation on serious crimes would apply where any such acts were detected.

69. **Mr. Crooke** (New Zealand) said that the Immigration Act provided for the principle of non-refoulement and deportation orders could only be issued in accordance with the International Covenant on Civil and Political Rights, the Convention relating to the Status of Refugees, and the Convention against Torture. Although the Covenant was not directly applicable, it was incorporated into domestic law primarily through the Bill of Rights Act.

70. **The Chairperson** thanked the delegation for the fruitful dialogue.

The meeting rose at 5.50 p.m.



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.: General
27 April 2015

Original: English

**Committee against Torture
Fifty-fourth session**

Summary record of the 1296th meeting

Held at the Palais Wilson, Geneva, on Thursday, 23 April 2015, at 10 a.m.

Chairperson: Mr. Grossman

Contents

Consideration of reports submitted by States parties under article 19 of the Convention
(continued)

Second periodic report of Romania

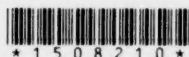
Meeting with the Chairperson of the Subcommittee on Prevention of Torture and Other
Cruel, Inhuman or Degrading Treatment or Punishment

This record is subject to correction.

Corrections should be submitted in one of the working languages of the United Nations. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E 6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.15-08210 (E) 270415 270415



★ 1 5 0 8 2 1 0 ★

Please recycle



The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Second periodic report of Romania (CAT/C/ROU/2 and CAT/C/ROM/Q/2)

1. *At the invitation of the Chairperson, the delegation of Romania took places at the Committee table*

2. **Ms. Morar** (Romania) said that Romania had become party to the Convention for the Protection of Human Rights and Fundamental Freedoms and its additional Protocols and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its additional Protocols. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had been carrying out visits to Romania since 1995 and all corresponding reports were published at the request of the Government of Romania. The Committee's most recent visit had been in 2014. A national preventive mechanism had been set up in 2014 within the Romanian People's Advocate (the national Ombudsman).

3. The national Constitution had been overhauled; reforms relating to the legislative, judicial and penitentiary systems had been introduced and legislation had been adopted to regulate various aspects linked to the protection of fundamental rights. Consequently, victims of crime had been granted access to legal aid and to compensation in cases where their rights had been violated. A framework had also been established for the protection of victims of trafficking in persons and domestic violence.

4. Significant progress had been made on international judicial cooperation, particularly relating to criminal activities and extradition. Steps had been taken to strengthen the protection offered to migrants and asylum seekers and to combat the exploitation of such groups. Since 2007, Romania had taken a series of steps to bring domestic legislation into line with European Union (EU) law and to develop a framework for the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 2014, a number of new pieces of criminal legislation had entered into force, including the Criminal Code, the Criminal Procedure Code, the corresponding acts on implementation and an act on the probation system.

5. In 2014, Romania had submitted a report on the implementation of the Covenant on Economic, Social and Cultural Rights and intended to submit a report on the implementation of the International Covenant on Civil and Political Rights in the near future.

6. **Mr. Tugushi** (Country Rapporteur), turning to article 1, asked whether there had been any cases of the direct application of the Convention and requested information on the application by the domestic courts of article 5 of the Criminal Procedure Code, articles 267 and 358 of the Criminal Code relating to the definition and prohibition of torture and criminal provisions concerning the sanctions imposed for torture. Did the State party have any plans to revise those sanctions?

7. Turning to article 2, he asked whether the national preventive mechanism had carried out any visits to detention facilities or prepared any reports. He asked for an update on the 2003 report on serving sentences in penitentiaries and on any activities related to the Optional Protocol to the Convention. He also asked for information on the structure of the national preventive mechanism and whether it had been established in accordance with the guidelines (CAT/OP/12/5) provided by the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, particularly under point 32. He asked whether a multidisciplinary team had been set up within the national preventive

mechanism, whether the budget of the Romanian People's Advocate had been increased to reflect the needs of the mechanism, whether talks had been held with civil society bodies on partnerships with the mechanism and whether cooperation had been established with non-governmental bodies carrying out visits to places of deprivation of liberty.

8. He asked whether there were any plans to address the lengthy duration of police custody, delays affecting the appearance of detainees before a judge responsible for ordering pretrial detention and the untimely transfer of detainees to detention facilities. He also requested data on the number of detainees affected by those issues.

9. As to the fundamental legal safeguards against torture, the Committee had been informed that there were often delays in notifying relatives of the deprivation of liberty of individuals and in informing detainees of their rights. Furthermore, the Committee had been informed of instances in which police officials had begun informal interrogation procedures in the absence of counsel or a legal representative. He asked what the State party intended to do to address that issue, whether monitoring of police custody took place and whether the national preventive mechanism had unrestricted access to police premises. He asked for comments on reports that police officials were often observed in the vicinity when persons deprived of their liberty were discussing their cases with counsel. He asked for information on cases in which minors deprived of their liberty had sometimes been questioned without access to counsel or a legal representative and he asked what steps had been taken to tackle that issue.

10. He asked whether the State party intended to adopt legislation guaranteeing access to medical treatment from the very beginning of the period of deprivation of liberty. He asked whether any steps would be taken to improve the registration of detainees. He wanted to know what was being done to tackle overcrowding in police custody units and detention facilities and whether there were plans to continue much-needed work to refurbish large prisons. How much living space did each detainee in the penitentiary system have a right to, in law and in practice? How many police officials had been prosecuted and sanctioned for ill-treatment of detainees?

11. He requested information on the use of special intervention units in detention facilities, the number of investigations of allegations of ill-treatment of detainees by prison officials and the corresponding prosecutions and sanctions. He asked whether there were plans to recruit more prison officials in order to help reduce inter-prisoner violence. He asked whether complaints that medical screening of detainees upon admission to prisons and police custody facilities took place in the presence of police or prison officials were true and whether such practices were legal in the State party.

12. He asked whether individual risk assessments were carried out for prisoners prior to their being placed under the maximum security regime and whether there were any plans to step up the implementation of alternative measures to imprisonment. Lastly, he would like to know whether the State party intended to increase the number of medical staff in prisons and police custody units and whether, given the lack of psychiatric care provision in such facilities, the prison authorities made use of clinics outside the penitentiary system.

13. **Ms. Belmir** (Country Rapporteur), turning to article 10, asked for information on training provided to officials (including medical and investigative staff) regarding the identification of signs of torture and ill-treatment and the implementation of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

14. With reference to article 11, she said that, in its 2010 report (CPT/Inf (2011) 31) on its visit to Romania, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had noted a number of serious shortcomings relating

to the conditions and duration of detention of pretrial detainees and she urged the State party to address those issues.

15. The European Committee's report had also pointed to the use of electric shock and improvised coshes during interrogations and the ill-treatment of minors by a unit responsible for investigating offences of organized crime and terrorism. She asked whether the State party had taken steps to eliminate such practices and to send a message of zero tolerance of ill-treatment and the use of excessive force to police officials. Training of law enforcement officers must be strengthened in that regard.

16. She asked why non-regulation objects such as coshes that could be used to inflict harm on detainees were kept at police custody facilities. She pointed to the lengthy duration of pretrial detention for individuals who either had yet to be identified, faced multiple charges, had been deemed to present a threat to public order or were awaiting the outcome of preliminary police inquiries. Furthermore, detainees were sometimes judged and sent back to police custody without having been identified. She asked for an explanation of such practices. Unaccompanied or abandoned minors and child victims of trafficking in persons often did not have access to assistance or counsel and there were shortcomings in terms of the registration of births, making it difficult to identify such individuals. She urged the State party to take steps to strengthen fundamental legal safeguards relating to police custody.

17. With regard to the judicial system, she said that the practice of holding judges responsible for delays in the processing of cases should be reconsidered. On articles 12 and 13, she asked whether the political will existed to bring to trial individuals who had committed crimes under the communist dictatorship. Turning to article 16, she raised the issues of the ill-treatment of children victims of trafficking, violence against women victims of trafficking and the discrimination suffered by the Roma community.

18. **Mr. Modvig** asked how many cases of torture and ill-treatment in prisons and pretrial detention facilities had been reported by doctors during the reporting period and requested information on the corresponding investigations, prosecutions and sanctions. He asked in how many cases detainees had exercised their right to request that an additional medical examination be carried out by a doctor of their choice and how detainees were informed of that right. He asked whether compulsory medical examinations of detainees were carried out on admission to pretrial detention facilities and prisons and, if so, whether time limits had been set for the performance of such examinations.

19. With regard to the establishment of the national preventive mechanism, he asked whether its mandate covered all types of places of deprivation of liberty, including institutions for children or adults with psychosocial disabilities. He asked whether the State party had ensured that the mechanism employed medical staff qualified to monitor conditions in such establishments and to provide any necessary assistance and whether civil society bodies would be involved in such work. With reference to article 14, he asked whether the State party would consider setting up a system to provide information on redress and compensation measures for victims of torture.

20. **Ms. Gaer**, referring to paragraph 25 of the list of issues (CAT/C/ROM/Q/2), said she shared the concerns of Ms. Belmir with regard to the Presidential Commission for the Study of the Communist Dictatorship in Romania; she wished to focus on the situation of impunity since some persons accused of ill-treatment had been identified, but cases had not been investigated. She sought further information concerning the six criminal complaints mentioned in paragraph 328 of the State party report and concerning the 35 persons referred to in paragraph 330 who had been investigated.

21. In paragraph 26 of the list of issues, the Committee had asked for statistical data, which had not been provided. She asked why the State party did not gather data on the nationality or ethnicity of defendants and victims or regarding convictions, as mentioned in

paragraphs 346 and 347 of its report. She asked the delegation to comment on the statement by the European Roma Rights Centre that Romania was "an outlier among European countries in its failure to collect data on racially motivated crime in general and discriminatory police misconduct in particular". In assessing information concerning the treatment of the Roma, it would be useful for the Committee to know whether in the justice system in Romania people of a certain ethnicity or race were over-represented in detention, in orphanages, in homes for persons with mental disabilities or in psychiatric institutions. She understood that abuse of psychiatric facilities had been one of the issues investigated by the Presidential Commission and any analysis of how far past practice influenced the present would be helpful. The availability of data would facilitate an assessment of the claims by the European Roma Rights Centre of discriminatory police conduct against certain minorities.

22. **Mr. Gaye** supported the view that persons deprived of liberty should have the right to a lawyer; he questioned the exceptions from exercising such right listed in paragraph 53 of the State party report: the presence of a lawyer was essential, even in cases of flagrante delicto where the facts of the case and the existence of proof still had to be discussed. He wished to know whether detained persons had the right to legal counsel during questioning in cases of flagrante delicto.

23. In paragraph 152 of its report, the State party maintained that persons had the right to appeal decisions to the court concerning their removal from the territory; he wished to know whether the appeal could have the effect of suspending proceedings and whether the appeals could be used in cases of extradition as well as refoulement.

24. In paragraph 280 of its report, the State party set out the reasons why the number of inmates had increased in the period 2008–2013; he was surprised to learn from the second subparagraph that a failure, since 2003, of any form of criminal liability or consequences of conviction (amnesty or collective pardons) had led to an increase in the prison population. He wished to know whether amnesty or collective pardons had ever been granted in cases of torture.

25. **Mr. Domah** said there was a systemic flaw in the legal and judicial systems in Romania regarding preventive detention. He asked on what facts the State party relied in that respect since the exceptional measures referred to in the report had not been specified. According to article 226 of the new Criminal Procedure Code, preventive arrest during criminal prosecution "shall be ordered at most for 30 days" by a judge, a procedure that contradicted the accepted rule that bail was the norm in criminal prosecutions. Although preventive detention could be appealed in the judicial system, there were procedural barriers such as the obligation to prepare and send files to judges within one day. The laws on preventive detention violated the principle of legality, a principle on which all laws should be based.

26. **Mr. Zhang**, referring to article 12 of the Convention and to prosecution procedures in Romania, asked the State party to explain the assertion in paragraph 365 of its report that "police bodies shall have no jurisdiction in conducting any investigation" in cases of breaches of human rights by a police officer, and the statement in paragraph 366 that the prosecutor could "have investigation acts conducted by the judicial police bodies". Given the statement in paragraph 369 that a police station was competent to investigate a complaint concerning the General Immigration Inspectorate, he was puzzled about the role of the police in the prosecution system. With respect to the right of persons deprived of their liberty to file petitions to the administration of the place of detention, as outlined in paragraph 372, he wished to learn more about the "competent bodies" to whom the petitions would be referred if they had not been solved.

27. With reference to article 15 and to paragraph 434 of the State party report, he asked for examples of specific cases of "unlawful arrest and abusive investigation" which had resulted in the prosecution of law enforcement staff.

28. **Mr. Bruni** asked whether the State party would be ready to consider acceptance of the procedure under article 22 of the Convention by declaring the Committee competent to examine individual complaints.

29. He noted the statement in paragraph 176 of the report that "no evidence could be produced regarding cases where persons or foreign official agencies were involved, in Romania, in illegal detention or transport of detainees". He asked whether the State party could comment further on allegations of secret detention and transit of foreign suspects of terrorism in the light of an interview reported by the international media in 2014, in which a former Romanian official had reportedly stated that the Central Intelligence Agency of the United States of America had used centres in Romania, including a transit camp where prisoners were kept before being moved to other locations between 2003 and 2006.

30. In paragraphs 276 to 278 of the report, reference was made to the planned construction of two new prisons in order to alleviate overcrowding in the penitentiary system, but it had been reported that the projects had not started for want of funds. Romania had already been condemned by the European Court of Human Rights on account of its poor prison conditions. He asked when the funds to build the prisons would be made available. Were there any plans to improve conditions in the Gherla Penitentiary, a maximum security prison that had originally been built in 1540? He wished to know what concrete steps had been taken to achieve the strategic objective set out in paragraph 471 to ensure respect for the rights of inmates by "achieving the minimum standards for accommodation" in all places of detention.

31. **Ms. Pradhan-Malla** said that she shared the concerns raised by fellow Committee members and by the Committee on the Elimination of Racial Discrimination regarding the inhuman and degrading treatment of the Roma population, who were often excluded from or had restricted access to support systems. She asked whether the Government could provide information on the situation of the Roma and any action it had taken to provide access to support services for and to combat discrimination against minority populations.

32. In addition to the statistics provided in paragraphs 279, 304 and 311 of its report, she requested the State party to provide gender-disaggregated data. She asked whether specific measures were taken to respond to the different needs and experiences of women detainees and prisoners. She noted the changes made to the legal framework set out in paragraph 119 of the report in order to combat physical violence, including domestic violence, but it was not clear whether the law criminalized mental and sexual violence within the family. She asked the State party to provide statistics on violence against women, and details of prosecutions and of whether restorative justice ensured justice from the victim's perspective.

33. **The Chairperson**, speaking as a member of the Committee, commended the creation of the national preventive mechanism and underlined the need for sufficient resources to be allocated to it. He asked the delegation to share details on the mechanism's programme of work and the participation of civil society organizations in its activities.

34. Article 1 of the Convention referred to "discrimination of any kind" as an element of the crime of torture and not as an aggravating circumstance; thus abuse, including gender-based violence, was considered to be a form of torture. He noted that under the law in Romania, discrimination was considered to be an aggravating circumstance rather than an element that constituted a crime. He drew attention to the death of 26-year-old Gabriel-Daniel Dumitrache in a police station on 4 March 2014, as a result of which a police officer was facing a charge of assault resulting in involuntary manslaughter; under the Convention, the charge would be "torture" and not the lesser criminal charge of "assault", while

"homicide" would have been a more appropriate charge than "manslaughter". He sought an explanation as to the lack of proper classification of crimes in accordance with the Convention. As a university professor, he advocated the use of proper training, while observing that one case of proper punishment served the same purpose as one hundred training sessions. The absence of impunity served as an incentive for people to change their behaviour.

35. He was aware that the law provided for medical examination in detention, although numerous reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had found them to be cursory or a mere formality; he asked whether the State party agreed with that assessment and what steps were being taken to ensure that thorough medical examinations were performed.

36. He supported the concerns raised by Committee members regarding the use of "administrative detention" and other forms of detention in which a detainee was deprived of the right to a lawyer or to a doctor or other safeguards.

37. The police performed an essential role in combatting terrorism and crime but it was worrying when there was no independent authority to examine allegations of misconduct against them. He asked what action had been taken to address discrimination in the police force, including in the case of the recruitment of Roma police officers. Except in cases of national security threats, it was important that the Romanian coastguard should continue to release asylum seekers, including children, during the course of its search and rescue activities.

38. **Mr. Tugushi** (Country Rapporteur) said that one of the challenges to be met by the national preventive mechanism in Romania would be the provision of specialized social care institutions, especially for persons and minors with disabilities. The institutionalization of persons with disabilities, including minors, had not been sufficiently reformed in Romania and a high number of people with psychiatric disorders were still housed in mental hospitals, while community and outpatient services had not been suitably developed. According to official data from the Ministry of Labour, 62,000 children deprived of parental care had been included in the special protection system in 2013, with 22,000 being housed in institutions. Children with disabilities in particular did not benefit from social inclusion measures. Official statistics on the ethnicity of children in institutions were not available, although information from non-governmental organizations in 2010 showed that 28 per cent of children in 22 homes were of Roma descent. He queried the high number of institutions for children with disabilities and the high number of cases of physical and emotional neglect, including corporal punishment and the use of unlawful restraints, in children's institutions. There was no effective avenue for minors to lodge complaints. He asked what plans were in place to reintegrate more children into families and into the community and whether any regular inspections of institutions were conducted.

39. Romania had made progress in the area of juvenile justice, and the amendment to the Criminal Code as of February 2014 abolishing the imprisonment of minors was a positive development. However, it would take time for the justice system to adapt to the changes and many minors were still being kept in prison-type institutions. He asked when all institutions would be brought into line with recent legal changes.

40. Although the placement of persons in psychiatric centres by local authorities could be subject to administrative appeal, the possibility to appeal was frequently denied because the related files did not contain the original decisions taken by local authorities. Procedures concerning placements must offer conditions of independence and impartiality and must be based on objective medical, psychological and educational expert reports; they should also be subject to judicial review. He asked whether the Romanian authorities planned to take legislative measures to bring procedures into compliance with accepted standards, in

particular by guaranteeing that individuals who were subjected to placement had all the legal safeguards to challenge it. Although de jure the position of patients in Romania was considered to be voluntary, their consent to treatment in practice (de facto) was not sought by the authorities. Therefore, the true number of involuntary patients in Romania was probably much higher than that recorded.

41. He asked whether the use of mechanical restraints in psychiatric institutions was duly recorded and if registers were kept in all institutions. He wished to know whether mental health-care facilities were monitored by national health authorities and how many complaints had been lodged by patients in mental health-care institutions concerning violations of their rights over the course of the previous year. Was an independent ombudsman appointed in hospitals to assist patients in bringing complaints?

42. He wished to know why the law allowed disciplinary procedures in prisons to be administered following certification from a local doctor that a prisoner was fit to undergo punishment, since the process could seriously undermine the relationship between doctor and patient.

43. **Ms. Belmir** (Country Rapporteur) said that the Special Rapporteur for migrant workers and their families had reported that the length of administrative detention for migrants fell into three categories: 6 months for those in an irregular situation; 2 years for those awaiting expulsion; and an indefinite period for those considered to be undesirables. The Special Rapporteur had also highlighted the plight of victims of international and domestic trafficking, who did not enjoy the protection of the State if they failed to cooperate with the authorities, even where they were exposed to reprisals. Furthermore, victims who cooperated were frequently treated as criminals by the agencies responsible for combating people trafficking. Children who were victims of trafficking or who had been abandoned by their parents were at particular risk of sexual exploitation, a problem compounded by the lack of birth registration and the status of migrants in the State party.

44. The discrimination against Roma and failure to respect their economic and social rights was evident in the frequent cases of eviction and rehousing that affected them. It was well illustrated in the case of a person who had left the country to work abroad and whose house had been sold in the person's absence. Such discrimination fell squarely within the definition of torture set out in the Convention.

The meeting was suspended at 12.05 p.m. and resumed at 12.15 p.m.

Meeting with the Chairperson of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

45. *At the invitation of the Chairperson, the Chairperson of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment took a place at the Committee table.*

46. **The Chairperson** welcomed the opportunity to strengthen cooperation and coordination between the two bodies and invited the Chairperson of the Subcommittee to present his eighth annual report (CAT/C/54/2).

47. **Mr. Evans** (Chairperson of the Subcommittee on Prevention of Torture), introducing the report, said that six new members had been elected to the Subcommittee in October 2014. Seventy-seven States parties, including most recently Mongolia, were now parties to the Optional Protocol, equivalent to almost half of the number of States parties to the Convention against Torture. There had been seven visits in 2014: three visits under article 11 (a) of the Optional Protocol (Azerbaijan, Nicaragua and Togo), three advisory visits to national preventive mechanisms (Ecuador, Malta and Nigeria) and one follow-up visit to the Maldives. The Subcommittee had decided to break off its visit to Azerbaijan

owing to obstructions it had encountered in the course of carrying out its mandate under the Optional Protocol. Following further discussions with the State party, the visit had been rearranged for April 2015 and first indications appeared to show that the visit had been a success. The number of visits planned for 2015 had risen to nine, including one follow-up visit and eight regular visits to Azerbaijan, Brazil, Guatemala, Italy, Nauru, the Netherlands, the Philippines and Turkey, which represented a significant step change in the Subcommittee's activities.

48. Some 61 States parties had established a national preventive mechanism, which reflected a high level of compliance with the obligations contained in the Optional Protocol and presented the Subcommittee with an exponential increase in its workload. Additional contributions to the Special Fund set up in accordance with article 26 of the Optional Protocol would therefore be required to enable the Subcommittee to successfully conduct its programme of visits and respond to State party requests for technical assistance.

49. In its annual report, the Subcommittee had outlined its views on several substantive issues, including pretrial detention, and intended to pursue that preventive approach in the coming years. Looking ahead, the Subcommittee wished to further increase the visibility of its work at the national, regional and international levels and intended to modify the current format of its annual report accordingly. It had recently created a Twitter hashtag to raise awareness of its torture prevention efforts and intended to issue regular statements, such as those concerning visit obligations and reprisals published during the course of 2014, as a means of addressing key issues on a more timely basis. The Subcommittee also planned to strengthen its cooperation with other international and regional bodies, as well as the Committee.

50. **Ms. Gaer** welcomed the report's focus on pretrial detention and women in detention, two very important substantive issues for both the Committee and the Subcommittee. Recalling the strict page limits on treaty body annual reports introduced under the treaty body strengthening process, she said that careful consideration would need to be given to combining the annual reports of the Committee and the Subcommittee. She proposed rather inserting a weblink at the end of the Committee's annual report, which would direct readers to an electronic copy of the Subcommittee's report. As to the Subcommittee's suspended visit to Azerbaijan, she asked whether, in the spirit of cooperation, the Committee should issue a statement commenting on the obstacles affecting the visit. She also wondered whether the Committee should consider establishing a Special Fund of its own as a means of strengthening its capacity. Lastly, she wished to know what criteria were used to decide which national preventive mechanisms should receive an advisory visit from the Subcommittee.

51. **Mr. Tugushi** asked whether the Subcommittee's views on corruption outlined in its sixth annual report had been reported upon by the media and, if so, whether that had helped to raise awareness of the issue. In the light of the Subcommittee's ambitious programme of visits for 2015, he wished to know whether there had been a corresponding rise in the number of secretariat staff in order to manage the additional workload. Regarding the increased number of national preventive mechanisms, he enquired whether the Subcommittee had identified any positive or negative trends in the mechanisms' capacity and level of independence. What steps had been taken to ensure that national preventive mechanisms received the technical assistance they required and how much of the Subcommittee's time was assigned to providing that support?

52. **Ms. Belmir** asked whether the Subcommittee actively collaborated with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and, if so, whether that cooperation had a positive impact on the outcome of the Subcommittee's visits to European States parties.

53. **Mr. Bruni** welcomed the Subcommittee's paper on reprisals, which set forth the measures available to Subcommittee members who became aware of the existence or threat of reprisals during country visits. He questioned, however, the advisability of certain measures, such as abandoning a visit if the threat of reprisals was shown to exist or publicizing the threat via local or international media, both of which could leave persons at risk even more exposed to the very ill-treatment and abuse the Subcommittee was trying to prevent and in the latter case could violate the confidential nature of the visit.

54. **Mr. Modvig** asked whether the Subcommittee had strengthened its participation in the Convention against Torture Initiative and whether it intended to implement measures aimed at increasing civil society involvement in torture prevention efforts. Lastly, he stressed the importance of increasing cooperation and collaboration between the Committee and Subcommittee to ensure the most effective use of resources and avoid duplication.

55. **Mr. Evans** (Chairperson of the Subcommittee on Prevention of Torture) said that the Subcommittee intended to draft a more in-depth statement on the particular difficulties and risks faced by women in detention for inclusion in its next annual report. The idea of combining the Committee and Subcommittee's annual reports in one document posed a great problem. The inclusion of a weblink at the end of the Committee's annual report pointing to the Subcommittee's report would not be appropriate given that the Subcommittee was a full member of the treaty body system and a full version of its annual report must be made available. The issues that had resulted in the suspension of the initial visit to Azerbaijan had been resolved and the current visit had been progressing well. The Subcommittee's subsequent report would provide further information and analysis of both visits to the country.

56. As to the increase in staffing numbers required by the additional visits, the Subcommittee had taken innovative steps to increase its resources, such as fostering greater direct contact between Subcommittee members and States parties and employing an additional secretariat member. With regard to the criteria used to arrange advisory visits, the Subcommittee preferred to organize visits to national preventive mechanisms with which it had had prior contact so that it could accurately assess the de facto implementation of the Convention.

57. The Subcommittee made great efforts to include a wide range of stakeholders in its substantive discussions, including civil society organizations, and had sought to increase its participation in the Convention against Torture Initiative. It welcomed the opportunity to work closely with other organizations such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and had seen an improvement in the outcomes of its visits to European States parties as a result.

58. Following the publication of its sixth annual report, more attention had been paid to combating corruption at all levels as a means of preventing torture and there had been a clear overall strengthening in the capacities of many national preventive mechanisms. The issue of reprisals presented a series of options and Subcommittee members were encouraged to carefully choose the most appropriate measure to respond to each individual threat.

59. **The Chairperson** thanked Mr. Evans and said that coordination and cooperation between the Committee and the Subcommittee should continue.

The meeting rose at 1.05 p.m.